

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE JESUS RUIZ, JR.,

Defendant and Appellant.

E035702

(Super.Ct.No. INF044898)

OPINION

APPEAL from the Superior Court of Riverside County. Thomas N. Douglass, Jr.,
Judge. Affirmed.

Randall B. Bookout, under appointment by the Court of Appeal, for Defendant
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, James D. Dutton,
Supervising Deputy Attorney General, and Melissa A. Mandel, Deputy Attorney General,
for Plaintiff and Respondent.

Following the denial of his motion to suppress evidence seized during a warranted search, Jose Jesus Ruiz (Ruiz) pled guilty to possessing methamphetamine for sale. (Health & Saf. Code, § 11378.) He was sentenced to the agreed-to low term of 16 months in prison. He appeals, contesting the denial of his motion to suppress. We conclude that the motion was properly denied by the trial court and affirm.

Information in the Warrant Affidavit

A shooting occurred around 11:30 p.m. on July 24, 2003, in Cathedral City. Soon thereafter, the victim, who apparently died at some later point, reported that a male Hispanic, known to him as “Pelon” from Banning, shot him in the back over drugs. The victim said that “Pelon” fled in a newer model black Lincoln Town Car. A trail of blood from the victim led to an apartment around the corner, where blood drops were seen on the living room floor. The occupants of the apartment were not around. At 5:00 a.m. on July 25th, they appeared at the Cathedral City home of a friend. The male occupant of the apartment used his friend’s phone, arguing with the party on the other end about something happening in his apartment and the possibility he would be evicted for it. Earlier that morning, Salvador Delgado, his girlfriend, and a male Hispanic had also come to the friend’s home. Delgado offered the friend methamphetamine, saying he had a lot. Delgado used the friend’s phone to call someone else, telling them about a scuffle, a nine-millimeter gun and bloodstains left at the place. Both occupants of the apartment told police that at 10:00 p.m. on July 24th, they had left Delgado, a life-long friend of the male occupant, alone in their apartment.

On August 3, 2003, Delgado told police that he was at the apartment when someone called and told him to get in touch with a man named “Pelon” to help the latter with a drug deal. Delgado called “Pelon” and told him the latter was to purchase 10 pounds of “glass” (a more pure form of methamphetamine than is normally sold) from the victim and an unknown Hispanic male at the apartment. Delgado had his girlfriend and the apartment’s occupants leave the apartment before the transaction was to take place. “Pelon” and a man Delgado identified as “Tony” came to the apartment. “Tony” had an Uzi TEC-9-type handgun in his waistband and “Pelon” had a Ruger nine-millimeter semiautomatic handgun. The victim and the unknown Hispanic male came into the apartment with a plastic bag full of methamphetamine. “Pelon” and the unknown Hispanic male argued and Delgado hit the latter on the head with his fist. “Tony” wrestled with the victim, who had the methamphetamine and the money and was trying to run out the door. “Tony” got both from the victim and “Pelon” chased the victim outside, where a single shot blast was heard. “Pelon” returned to the apartment and told “Tony” and Delgado to gather up the drugs and money. All three got into “Pelon’s” 2004 Lincoln Town Car and “Pelon” drove them to his home in Banning. “Pelon” and “Tony” had their guns with them on the drive and did not discard them during it. Once at “Pelon’s” home, they split the methamphetamine, with Delgado getting two pounds. Someone “Tony” called came to get him and Delgado and took them back to Cathedral City. Delgado took officers to “Pelon’s” home, where a dark Lincoln Town Car was parked along with a vehicle registered to a man, who, according to his rap sheets and

statements he made during law enforcement contacts, had the moniker “Pelon.” On August 7, 2003, “Pelon” was arrested for murder.

“Pelon” denied involvement in the killing or even having a gun, although he admitted being at the apartment at the time of the shooting. He confirmed Delgado’s statement about the drug deal. He identified the person Delgado had referred to as “Tony” as “Jesse” or “Jesus,”¹ and he gave a first name for the unknown Hispanic male. “Pelon” confirmed Delgado’s story about an argument during the drug deal and that the victim tried to run with the methamphetamine and money. He confirmed Delgado’s statement that Delgado hit the unknown Hispanic male while “Jesse/Jesus” struggled with the victim for the methamphetamine and money. “Pelon” said “Jesse/Jesus” was the only one with a gun and it was the latter who chased the victim. “Pelon” denied seeing “Jesse/Jesus” shoot the victim, but he heard a single shot blast outside the apartment. “Pelon” confirmed Delgado’s statements that “Jesse/Jesus” and Delgado gathered up the methamphetamine and money, “Pelon” drove them to Banning in the latter’s Lincoln Town Car, and, once there, they split the methamphetamine. “Pelon” described it as being one pound. “Pelon” also confirmed Delgado’s assertion that “Jesse/Jesus” and Delgado returned to Cathedral City. Although “Pelon” flunked a lie detector test, he refused to change his story.

¹ Contrary to the People’s assertion, Delgado never picked Ruiz’s picture out of a photo lineup, identifying him as “Tony.” Ruiz here fails to appreciate the erroneousness of this assertion.

A run of the names “Jesse” and “Jesus” through law enforcement’s computer system yielded Ruiz’s name. “Pelon” picked Ruiz’s photo out of a photo lineup as “Jesse/Jesus.” “Pelon” picked Delgado’s photo out of another photo lineup, identifying him as the person who had hit the unknown Hispanic male. “Pelon” confirmed Delgado’s story that the latter had not had a weapon.

At 10:10 p.m. on August 7, 2003, Ruiz was arrested for murder outside his father’s home, where the former lived. Ruiz’s father allowed officers to search his home, but not the bedroom which his son occupied.

Ruiz admitted that he was at the apartment when the fight broke out. He admitted that someone was shot and “we” drove away.

Based on his training and experience, the affiant asserted that drug traffickers frequently keep arms in their homes and vehicles and the presence of arms there is circumstantial evidence of dealing. He further asserted that perpetrators of crimes hide evidence of their offenses in their homes and their surroundings. He believed that Ruiz participated in the drug deal at the apartment and evidence of his participation could be found in his car, home and its surroundings. The affiant stated that evidence gathered showed Ruiz had a semiautomatic handgun whose whereabouts was unknown, which the affiant believed was in Ruiz’s home. The affiant believed Ruiz committed or had knowledge of the murder and evidence of it could be found in his car, home and its surroundings.

DISCUSSION

The trial court concluded that under the totality of circumstances test (*Illinois v. Gates* (1983) 462 U.S. 213, 238 [103 S.Ct. 2317]), there was sufficient probable cause for the issuance of the search warrant to search the aforementioned areas for evidence of the murder and drug deal. Ruiz here contests this conclusion.

Ruiz first claims that the affidavit “includes no facts that implicate [him] beyond the claims of [‘Pelon’] and [Ruiz]’s generic admission he was present when the fight broke out.” We disagree. Delgado’s statements also tied Ruiz to the crimes. Specifically, he said that Ruiz was with “Pelon,” that he was armed with an Uzi-type weapon, and he wrestled the drugs and money from the victim when the latter tried to run out of the apartment with them. Delgado’s other statements were corroborated by the physical evidence, i.e., the trail of blood from the victim to the apartment and the presence of blood inside the apartment, by the statements of non-perpetrators in the offenses, including the victim, the occupants of the apartment, and the friend, and by information gathered by the police, i.e., the location of “Pelon’s” home and the existence of his late model black Lincoln Town Car. Of course, Delgado’s statements about the crimes themselves were substantially corroborated by the statements of “Pelon,” including several that were against the latter’s penal interest. As the affiant pointed out, no one other than those present in the apartment could have known that only one shot was fired, as this information was disclosed to no one outside law enforcement. The fact that both Delgado and the victim claimed “Pelon” was the shooter, and “Pelon” had motive to falsely “finger” Ruiz as the triggerman, did not mean that Ruiz was off the hook for that

crime. Certainly, his presence at the scene and participation in the drug deal and ensuing struggle were evidence of aiding and abetting the murder.²

Ruiz next asserts that many of the statements in the affidavit were hearsay which did not contain a substantial basis for crediting them. Again, we disagree. Many things Delgado said were supported by the physical evidence, statements of non-perpetrators, information discovered by the police, and “Pelon’s” declarations against his own penal interest. Some of Delgado’s statements about the crimes also constituted declarations against his own penal interest (his admission that he hit the unknown Hispanic male when he and “Pelon” argued and he split the fruits of the crimes with “Pelon” and Ruiz). Ruiz himself corroborated the statements implicating him by Delgado and “Pelon” when he admitted being present during the struggle and shooting and leaving with others. The trial court got it right when it concluded that despite the fact that the story in the affidavit was sometimes difficult to follow,³ it contained sufficient evidence of probable cause to search. Having so concluded, we need not reach the question whether the officers relied in good faith on the warrant.

² Ruiz appears to concede the reliability of Delgado’s statements in his reply brief, but fails to appreciate the fact that they implicate him as an aider and abettor of the murder, if not also an active participant in the drug deal.

³ Creating even more room for criticism were the moving papers of defense counsel below, Michael J. Kennedy, which unprofessionally fell short of the goal of enlightening and providing assistance to the trial court in its difficult task of ruling on the merits of the motion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

GAUT

J.

KING

J.